

**Bankruptcy Proceeding Documents,  
including copies of Assignment of Certain  
Inventions from Stanley/Fenne  
to Pixelon, Inc. (at p. 32 ff)**

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10 Debtor-in-Possession  
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**AUG 22 2000**

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**INTRODUCTION**

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Pixelon Corporation dba Pixelon.com, the debtor and debtor-in-possession herein (the "Debtor" or "Pixelon"), hereby replies to the Objection to Debtor's Motion for Authority to Obtain Secured Financing filed by David Kim Stanley aka Adam Michael Fenne, David Snyder, and Sheila Robertson (the "Opposition").

By the Debtor's Motion for Authority to Obtain Secured Financing (the "Motion"), the Debtor seeks authority to borrow \$1,000,000 from Robert Petersen, or his designee (the "Loan").

Robert Petersen is a principal of the Petersen Publishing Co. which publishes magazines such as Motor Trend, Powder, and Team. The Loan is to be secured by a lien on substantially all of the Debtor's assets, including intellectual property. The Loan is convertible, at Petersen's option, to

an approximately 10% equity interest in the Debtor. As evidenced by his willingness to make this bridge loan, Petersen is interested in eventually acquiring either the Debtor or its assets by making further infusions of capital to the estate which will facilitate a substantial payment on allowed general unsecured claims. Without the Loan, the Debtor will have no funds to make its technology marketable and will be forced to shut down with little or no payout to general unsecured creditors. As indicated in the Debtor's Chapter 11 schedules, intellectual property is the Debtor's largest asset.

As indicated in the Motion, the Debtor has an immediate need for the proceeds of the Loan to pay its overhead expenses and to prepare its technology for potential customers. Even a brief continuance would prove fatal to the Debtor's reorganization effort and jeopardize any hope of the unsecured creditors receiving a distribution. Including the \$175,000 the Debtor raised from the sale of its Balthaser stock in July 2000, the proceeds of which were used to pay insurance and other expenses, the Debtor currently holds cash in the approximate amount of \$45,000 which is only expected to last for less than two weeks.

In the Opposition, David Kim Stanley aka Adam Michael Fenne ("Stanley/Fenne") asserts that he is the owner of the Debtor's intellectual property and therefore the Debtor's intellectual

1 property cannot be used as collateral for the Loan. As discussed more fully below, Stanley/Fenne  
2 does not own the Debtor's intellectual property and to the extent that Stanley/Fenne had any  
3 interest in the Debtor's intellectual property, Stanley/Fenne transferred it to the Debtor on July 14,  
4 1999. Accordingly, the Loan to Petersen should be approved in the form described in the Motion.

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7 **III.**

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9 **A. The Debtor and Its Business.**

10 The Debtor is a developer of technologies to deliver high quality media content, such as  
11 full-screen streaming video, over the Internet. The key to the Debtor's reorganization strategy  
12 will be to stay on the cutting edge of Internet media technology by developing new generations  
13 of compression and playback technologies. Virtually every major media company and industry  
14 analyst believes that movies, television shows, and other similar media will eventually be  
15 broadcast over the Internet. Up until now, however, Internet media player technology has not  
16 been able to deliver a high quality full-screen video program over the Internet due to the massive  
17 size of video files. The Debtor, however, is on the verge of making a major breakthrough in high  
18 quality full-screen video delivered over the Internet with its unique proprietary technologies.

19 In mid 1999, the Debtor developed and introduced its first Internet media player, using  
20 what is now known as "Generation 1" technology. In late 1999, the Debtor contracted with Loco  
21 Labs in San Jose, California to develop the Debtor's "Generation 2" full-screen Internet media  
22 player which is a state-of-the-art product that is currently offered by the Debtor. Because the  
23 most of whose work was done after Stanley/Fenne's departure from the Debtor, Stanley/Fenne  
24 has no interest in the Debtor's Generation 2 technology.

25 The Debtor has already made significant progress on its "Generation 3" technology and  
26 estimates that it will be able to perfect its Generation 3 technology in the next few months.  
27 Additional development costs are expected to be \$250,000. Needless to say, Stanley/Fenne has  
28 no interest in the Debtor's Generation 3 technology currently being developed because all of the  
Debtor's Generation 3 technology was developed after Stanley/Fenne was ousted from the

## **BACKGROUND**

1 Debtor. The Debtor's Generation 3 full-screen Internet media player represents a major leap  
2 over current Internet media player technology and is far more advanced than any other Internet  
3 media player in existence. This will give the Debtor a strong competitive advantage over its  
4 competitors. The Debtor's Generation 3 technology is eagerly anticipated and is already  
5 generating a great deal of interest and excitement among major media companies such as  
6 Twentieth Century Fox and Warner Brothers. These media companies know that the Debtor's  
7 Generation 3 technology will make the goal of broadcasting movies and other programs over the  
8 Internet a reality. As indicated in the Motion, the Debtor cannot complete its Generation 3  
9 technology without the proceeds of the Petersen Loan.

## **B. The Debtor's Relationship with Stanley/Fenne.**

10 Using the alias "Adam Michael Fenne," Stanley/Fenne founded the Debtor in 1998 and  
11 served as, among other positions, the Debtor's president and chairman of the board while he was  
12 a fugitive from justice. The Debtor is informed that in 1989, Stanley/Fenne pleaded guilty to  
13 over 50 counts of fraud and embezzlement in Virginia and Tennessee. Stanley/Fenne was  
14 ordered to pay restitution which reduced his lengthy prison sentence to eight years. However,  
15 Stanley/Fenne fled in 1996 with restitution only partly repaid. As a result, Stanley/Fenne was  
16 placed on the Commonwealth of Virginia's most-wanted list. On or about April 12, 2000,  
17 Stanley/Fenne surrendered to Virginia authorities who were about to capture him after a four-  
18 year manhunt. Stanley/Fenne is currently incarcerated in the Wise County, Virginia jail and will  
19 likely be extradited to Tennessee for further incarceration if and when he is ever released by  
20 Virginia authorities.

21 In 1999, the Debtor's board of directors and shareholders became increasingly concerned  
22 with Stanley/Fenne's irrational management behavior. For example, Stanley/Fenne entered into  
23 numerous contracts that were detrimental to the Debtor. There are also several well-documented  
24 instances of Stanley/Fenne's abusive management style. Stanley/Fenne also gave away  
25 substantial amounts of the Debtor's stock with no apparent benefit to the Debtor and without  
26 board approval.

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The most well publicized of Stanley/Fenne's numerous outrageous actions was when Stanley/Fenne squandered \$16.3 million (more than half of the Debtor's initial capital) on a

Internet and digital media. New management has also drastically reduced the Debtor's operating expenses.

## C. Events Precipitating this Chapter II Case

lavish launch party in Las Vegas, Nevada dubbed "iBash." iBash featured live performances by the Who, Natalie Cole, Faith Hill, and the Dixie Chicks, among others. The Debtor's board had authorized \$1 to \$4 million for the launch party and Stanley/Fenne exceeded his authority by a factor of four. Stanley/Fenne agreed to pay the PAX television network \$1 million to broadcast iBash and also gave PAX all of the advertising revenue from the broadcast. PAX should have paid the Debtor to air iBash but Stanley/Fenne decided to pay PAX instead. Stanley/Fenne also

4	C.	<u>Events Precipitating this Chapter 11 Case.</u>
5	Like many other so called "dot-com" companies, poor cost control and reckless spending	
6	by the Debtor's former management, especially Stanley/Fenné, precipitated a severe cash flow	
7	crisis in the Debtor's operations. Because of Stanley/Fenné and other former members of the	
8	Debtor's management's behavior the Debtor is the subject of numerous lawsuits pending	
	throughout the country which threatened to exhaust the Debtor's resources.	

10 agreed to pay Faith Hill an additional \$250,000 as a result of iBash being shown on PAX TV  
11 even though the Debtor had already paid Faith Hill \$500,000 which included the right to  
12 broadcast the performance on television. When Faith Hill's representative spread the word about  
13 Stanley/Fenne's largesse, the Dixie Chicks, who are friends of Faith Hill, also asked the Debtor  
14 for another \$250,000 which Stanley/Fenne agreed to pay. Stanley/Fenne never sought nor  
15 received board or management approval for these expenditures.  
16 Because of Stanley/Fenne's bizarre behavior and reckless spending, the Debtor's board  
17 decided to terminate Stanley/Fenne's involvement with the Debtor shortly after iBash in  
18 November 1999. On or about April 10 or 11, 2000, Stanley/Fenne revealed to the Debtor that he  
19 was an imposter and that Adam Michael Fenne was an alias. As a result, on May 17, 2000, the  
20 Debtor brought a fraud action against Stanley/Fenne. A copy of the Debtor's complaint against  
21 Stanley/Fenne is attached to the Declaration of Peter F. Foley (the "Foley Declaration") as Exhibit  
22 "1."  
23 The Debtor would like to emphasize that all of its former personnel who were  
24 Stanley/Fenne's allies or co-conspirators were dismissed before the commencement of the instant  
25 Chapter 11 case and the Debtor's current management has no relationship with Stanley/Fenne.  
26 The Debtor's current management has been directing the Debtor's operations since June 20,  
2000. New management, in conjunction with the Debtor's highly experienced technology team,  
has continued to develop the Debtor's proprietary compression and playback technologies for the

Because the Involuntary Petition took away the capital the Debtor needed to develop its technology, the Debtor could not survive even if the Involuntary Petition were dismissed. Accordingly, the Debtor was forced to commence the instant Chapter 11 case in order to stabilize its financial problems so that it can concentrate on developing and marketing its products.

The Debtor's Intellectual Property

As described above, the Debtor owns proprietary technology to deliver high quality media over the Internet. There are three main elements of the Debtor's intellectual property: 1) an encoding system, 2) an encryption system, and 3) a decoding system. These elements work together to allow high image quality full-screen video media to be played over the Internet. The encoding system compresses the video file so that it can be transmitted over the Internet at high speeds, the encryption system prevents unauthorized viewing or copying of the media (this is very important to the media companies), and the decoding system, or "player", plays the media on the consumer's computer. The Debtor currently has nine pending patents on its technology. Attached to the Declaration of Peter F. Foley (the "Foley Declaration") as Exhibit "2" is a list of the Debtor's current pending patents.

## THE DEBTOR'S INTELLECTUAL PROPERTY DOES NOT BELONG TO

STANLEY FENNIS

**A. Stanley/Fenne Did Not Invent the Debtor's Technology.**

Nowwithstanding Stanley/Fenne's misrepresentations to the public and the Debtor's investors that he is an expert computer programmer, in reality, Stanley/Fenne never had the technical background, training, or expertise to have developed any of the Debtor's technology. Stanley/Fenne was a fugitive from justice who did not have a technical background and only possessed a computer programmer named "Adam Michael Fenne." <sup>1</sup>

The bulk of the work on the Debtor's Generation I technology was actually performed by Troy Kisky ("Kisky"), a computer programmer employed by the Debtor.

California Labor Code section 2860 provides:

Even . . . which an employee acquires by virtue of his employment, except the  
cure . . . on which is due to him from his employer, belongs to the employer,  
whether acquired lawfully or unlawfully, or during or after the expiration of the  
term of his employment.

Cal. Labor Code § 2860. Goodyear Tire & Rubber Co. of Akron, Ohio, v. Miller, 22 F.2d 353 (Cir. 1927) (invention made by employee hired to make it belonged to employer).

18 from the Debtor, Stanley/Fenne has no interest in the Debtor's Generation 2 technology. Needless  
19 to say, Stanley/Fenne has no interest in the Debtor's Generation 3 technology currently being  
20 developed because all of the Debtor's Generation 3 technology was developed after Stanley/Fenne  
21 was ousted from the Debtor.

22 **B. Stanley/Fenne Assigned All of His Intellectual Property to the Debtor.**

23 Notwithstanding the fact that ~~Stanley/Fenne~~ did not develop any of the Debtor's  
24 technology, the Debtor's nine pending patents, filed between July 12, 1999 and October 28, 1999,  
25 are registered in the name of "Adam Michael Fenne." This is not particularly surprising since  
26 Stanley/Fenne was the Debtor's president. However, regardless of the origin, "Adam Michael  
27 Fenne's" intellectual property belongs to the Debtor. On July 14, 1999, Stanley/Fenne executed,  
28 as "Adam Michael Fenne," an Assignment of Intellectual Property Rights Agreement (the "IP  
Assignment") with the Debtor. A copy of the IP Assignment is attached to the Foley Declaration

1 as Exhibit "5." As indicated in the IP Agreement, Stanley/Fenne assigned all of his right, title, and  
2 interest in any inventions from and after January 1, 1997 to the Debtor. Accordingly, to the extent  
3 Stanley/Fenne actually developed any intellectual property while he was an employee of the  
4 Debtor, such intellectual property belongs to the Debtor. As discussed above, the Debtor does not  
5 believe Stanley/Fenne developed any of the Debtor's technology. Rather, such assignments are  
6 standard in the technology industry to reassure investors that the company actually owns its  
7 technology.

8 After Stanley/Fenne's departure from the Debtor, Stanley Fenne and the Debtor entered  
9 into a Severance Agreement dated December 27, 1999 (the "Severance Agreement"). A copy of  
10 the Severance Agreement is attached to the Foley Declaration as Exhibit "6." Stanley/Fenne's  
11 assertion that the \$660,000 payment referenced in the Severance Agreement is consideration for  
12 Stanley/Fenne's assigning intellectual property to the Debtor is nonsensical because the Debtor  
13 already owned all of its intellectual property at that time. As indicated by the plain language of the  
14 Severance Agreement, the \$660,000 payment was to purchase the Debtor's stock held by  
15 Stanley/Fenne.

16 C. Stanley/Fenne Is Currently Illegally Using the Debtor's Technology.

17 After Stanley/Fenne was ousted from the Debtor, Stanley/Fenne started several new  
18 companies including companies known as Landragon.com, Ailtos.com, Axiar.com, and  
19 Lazaronventures.com. As indicated in the Severance Agreement sections 3.1 and 3.2,  
20 Stanley/Fenne is prohibited from using the Debtor's intellectual property and from competing with  
21 the Debtor. Furthermore, on October 10, 1999, Stanley/Fenne and the Debtor entered into a  
22 Confidentiality and Trade Secret Agreement (the "Confidentiality Agreement") whereby  
23 Stanley/Fenne agreed not to disclose, remove, or use any of the Debtor's proprietary technology.  
24 A copy of the Confidentiality Agreement is attached to the Foley Declaration as Exhibit "7." The  
25 Debtor is informed that Stanley/Fenne is currently using the Debtor's media player on the  
26 Lazaronventures.com website and intends to take action to enjoin such use. It is important to note  
27 that the Agreement in Principal dated May 6, 2000 between Stanley/Fenne and the Debtor, referred  
28 to in the Opposition, which purportedly allows Stanley/Fenne to use the Debtor's media player,

#### IV.

#### CONCLUSION

#### IV.

1 never became effective because its conditions precedent were never satisfied. To the extent  
2 Stanley/Fenne relied on the Agreement in Principal to give the Debtor any source codes, such  
3 intellectual property, as discussed above, is already the Debtor's property that was illegally taken  
4 by Stanley/Fenne (see Confidentiality Agreement).

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8 The Stanley/Fenne Opposition does not object to the approval of the Loan but does attempt  
9 to prohibit the use of the Debtor's intellectual property as collateral. As demonstrated, however,  
10 the Debtor owns its intellectual property and therefore the Debtor respectfully requests that the  
11 Court enter an order:

12 A. authorizing the Debtor to borrow \$1,000,000 from Robert Petersen, or his designee,  
13 at an interest rate of 12% per annum (the "Loan"). The Loan shall be due in one year with  
14 principal and accrued interest payable at the termination of the Loan. The Loan shall be secured  
15 by substantially all of the Debtor's assets and shall be convertible to a 10% equity interest in the  
16 Debtor; and

17 B. granting such other relief as the Court deems necessary and proper.

18 Dated: August 24, 2000

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WINTHROP COUCHOT  
PROFESSIONAL CORPORATION  
By:   
Marc J. Winthrop  
Charles Liu  
Proposed Attorneys for Debtor and  
Debtor-in-Possession

**DECLARATION OF PETER H. FOLEY**

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I, Peter H. Foley, hereby declare and state as follows:

I am the President of Pixelon Corporation dba Pixelon.com, the debtor and debtor-in-possession herein (the "Debtor" or "Pixelon"), and am authorized to make this Declaration on its behalf. The matters stated herein are within my own personal knowledge and if called as a witness, I could and would competently testify thereto.

By the Debtor's Motion for Authority to Obtain Secured Financing (the "Motion"), the Debtor seeks authority to borrow \$1,000,000 from Robert Petersen, or his designee (the "Loan"). Robert Petersen is a principal of the Petersen Publishing Co. which publishes magazines such as Motor Trend, Powder, and Teen. The Loan is to be secured by a lien on substantially all of the Debtor's assets, including intellectual property. The Loan is convertible, at Petersen's opinion, to an approximately 10% equity interest in the Debtor. Petersen has expressed a strong interest in eventually acquiring either the Debtor or its assets by making further infusions of capital to the estate which will facilitate a substantial payment on allowed general unsecured claims. Without the Loan, the Debtor will have no funds to make its technology marketable and will be forced to shut down with little or no payout to general unsecured creditors. As indicated in the Debtor's Chapter 11 schedules, intellectual property is the Debtor's largest asset.

As indicated in the Motion, the Debtor has an immediate need for the proceeds of the Loan to pay its overhead expenses and to prepare its technology for potential customers. A brief continuance would prove fatal to the Debtor's reorganization effort and jeopardize any hope of the unsecured creditors receiving a distribution. Including the \$175,000 the Debtor raised from the sale of its Balthaser stock in July 2000, the proceeds of which were used to pay insurance and other expenses, the Debtor currently holds cash in the approximate amount of \$45,000 which is only expected to last for less than two weeks.

The Debtor is a developer of technologies to deliver high quality media content, such as full-screen streaming video, over the Internet. The key to the Debtor's reorganization strategy will be to stay on the cutting edge of Internet media technology by developing new generations of compression and playback technologies. Virtually every major media company and

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industry analyst believes that movies, television shows, and other similar media will eventually be broadcast over the Internet. Up until now, however, Internet media player technology has not been able to deliver a high quality full-screen video program over the Internet due to the massive size of video files. The Debtor, however, is on the verge of making a major breakthrough in high quality full-screen video delivered over the Internet with its unique proprietary technologies.

In mid 1999, the Debtor developed and introduced its first Internet media player, using what is now known as "Generation 1" technology. In late 1999, the Debtor contracted with Loco Labs in San Jose, California to develop the Debtor's "Generation 2" full-screen Internet media player. Loco is a state-of-the-art product that is current offered by the Debtor. Because the Generation 2 technology current offered by the Debtor was developed by an outside contractor, most of whose work was done after Stanley/Feneke's departure from the Debtor, Stanley/Feneke has no interest in the Debtor's Generation 2 technology.

The Debtor has already made significant progress on its "Generation 3" technology and estimates that it will be able to perfect its Generation 3 technology in the next few months with an additional \$250,000 in development cost. Needless to say, Stanley/Feneke has no interest in the Debtor's Generation 3 technology currently being developed because all of the Debtor's Generation 3 technology was developed after Stanley/Feneke was ousted from the Debtor. The Debtor's Generation 3 full-screen Internet media player represents a major leap over current Internet media player technology and is far more advanced than any other Internet media player in existence. This will give the Debtor a strong competitive advantage over its competitors. The Debtor's Generation 3 technology is eagerly anticipated and is already generating a great deal of interest and excitement among major media companies such as Twentieth Century Fox and Warner Brothers. These media companies know that the Debtor's Generation 3 technology will make the goal of broadcasting movies and other programs over the Internet a reality. As indicated in the Motion, the Debtor cannot complete its Generation 3 technology without the proceeds of the Petersen Loan.

Using the alias "Adam Michael Feneke," Stanley/Feneke founded the Debtor in 1998 and served as, among other positions, the Debtor's president and chairman of the board while he

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1 was a fugitive from justice. The Debtor is informed that in 1989, Stanley/Fenne pleaded guilty to  
2 over 50 counts of fraud and embezzlement in Virginia and Tennessee. Stanley/Fenne was ordered  
3 to pay restitution which reduced his lengthy prison sentence to only eight years. Nevertheless,  
4 Stanley/Fenne fled in 1996 with restitution only partly repaid. As a result, Stanley/Fenne made the  
5 Commonwealth of Virginia's most-wanted list. On or about April 12, 2000, Stanley/Fenne made the  
6 surrendered to Virginia authorities who were about to capture him after a four-year manhunt.  
7 Stanley/Fenne is currently incarcerated in the Wise County, Virginia jail and will likely be  
8 extradited to Tennessee for further incarceration assuming he is ever released by Virginia  
9 authorities.

10 8. In 1999, the Debtor's board of directors and shareholders became increasingly  
11 concerned with Stanley/Fenne's irrational management behavior. For example, Stanley/Fenne  
12 entered into numerous contracts that were detrimental to the Debtor. There are also several well  
13 documented instances of Stanley/Fenne's abusive management style. Stanley/Fenne also gave  
14 away substantial amounts of the Debtor's stock with no apparent benefit to the Debtor and without  
15 board approval.

16 9. The most well publicized of Stanley/Fenne's numerous outrageous actions was  
17 when Stanley/Fenne squandered \$16.3 million, more than half of the Debtor's initial capital, on a  
18 lavish "launch" party in Las Vegas, Nevada dubbed "iBash." iBash featured live performances by  
19 the Who, Natalie Cole, Faith Hill, and the Dixie Chicks, among others. The Debtor's board had  
20 authorized \$3 to \$4 million for the launch party and Stanley/Fenne exceeded his authority by a  
21 factor of four. Stanley/Fenne agreed to pay the PAX television network \$1 million to broadcast  
22 iBash and also gave PAX all of the advertising revenue from the broadcast. PAX should have paid  
23 the Debtor to air iBash but Stanley/Fenne decided to pay PAX instead. Stanley/Fenne also agreed  
24 to pay Faith Hill \$250,000 as a result of iBash being shown on PAX TV even though the Debtor  
25 had already paid Faith Hill \$500,000 which included the right to broadcast the performance on  
26 television. When Faith Hill's representative spread the word about Stanley/Fenne's largesse, the  
27 Dixie Chicks, who are friends of Faith Hill, also asked the Debtor for another \$250,000 which  
28 Stanley/Fenne agreed to pay. Stanley/Fenne never sought nor received board or management

1 approval for these expenditures.

2 10. Because of Stanley/Fenne's bizarre behavior and reckless spending, the Debtor's  
3 board decided to terminate Stanley/Fenne's involvement with the Debtor shortly after iBash in  
4 November 1999. On or about April 10 or 11, 2000, Stanley/Fenne revealed to the Debtor that he  
5 was an imposter and that Adam Michael Fenne was an alias. As a result, on May 17, 2000, the  
6 Debtor brought a fraud action against Stanley/Fenne. A copy of the Debtor's complaint against  
7 Stanley/Fenne is attached hereto as Exhibit "1".

8 11. The Debtor would like to emphasize that all of its former personnel who were  
9 Stanley/Fenne's allies or co-conspirators were dismissed before the commencement of the instant  
10 Chapter 11 case and the Debtor's current management has no relationship with Stanley/Fenne.  
11 The Debtor's current management has been directing the Debtor's operations since June 20, 2000.  
12 New management, in conjunction with the Debtor's highly experienced technology team, has  
13 continued to develop the Debtor's proprietary compression and playback technologies for the  
14 Internet and digital media. New management has also drastically reduced the Debtor's operating  
15 expenses.

16 12. Like many other so called "dot-com" companies, poor cost control and reckless  
17 spending by the Debtor's former management, especially Stanley/Fenne, precipitated a severe cash  
18 flow crisis in the Debtor's operations. Because of Stanley/Fenne and other former members of the  
19 Debtor's management's behavior, the Debtor is the subject of numerous lawsuits pending  
20 throughout the country which threatened to exhaust the Debtor's resources.

21 13. Notwithstanding the Debtor's financial problems, the Debtor owns state of the art  
22 proprietary compression and playback technologies for distributing media over the Internet.  
23 Because of the Debtor's future potential, in early 2000, the Debtor had arranged for bridge  
24 financing in the amount of \$2,000,000 from Alliance Atlantis Communications, Inc ("Alliance  
25 Atlantis"). Alliance Atlantis, based in Toronto Canada, is a leading broadcaster, creator, and  
26 distributor of television shows including Gene Roddenberry's Final Conflict, Peter Benchley's  
27 Amazon, Total Recall 2070, and Beastmaster and movies including Scary Movie, Sunshine, and  
28 the Cell. In addition, the Debtor had entered into a contract with Alliance Atlantis where the

1 Debtor would encode 100 movies for Alliance Atlantis for approximately \$350,000.

2 14. On April 27, 2000, while the loan and contract from Alliance Atlantis were about

3 to close, certain creditors and purported creditors: Ronald Clear, Snowden Electric Company,

4 Single Source, and Lawrence J. Winslow (the "Petitioning Creditors"), through their representative

5 Michael W. Kinney, filed an involuntary Chapter 7 petition against the Debtor (the "Involuntary

6 Petition").

7 15. Because the Debtor believes the Involuntary Petition was without merit, the Debtor

8 initially prepared to move to dismiss the Involuntary Petition along with a prayer for damages and

9 a request for a bond against the Petitioning Creditors. Unfortunately, the Involuntary Petition

10 alarmed Alliance Atlantis so much that it withdrew its support of the Debtor within days of the

11 Involuntary Petition being filed.

12 16. Because the Involuntary Petition took away the capital the Debtor needed to

13 develop its technology, the Debtor could not survive even if the Involuntary Petition were

14 dismissed. Accordingly, the Debtor was forced to commence the instant Chapter 11 case in order

15 to stabilize problems so that it can concentrate on developing and marketing its

16 technology while at the same time seeking other potential investors.

17 17. As described above, the Debtor owns proprietary technology to deliver high quality

18 media over the Internet. There are three main elements of the Debtor's intellectual property: 1) an

19 encoding system, 2) an encryption system, and 3) a decoding system. These elements work

20 together to allow high image quality full-screen video media to be played over the Internet. The

21 encoding system compresses the video file so that it can be transmitted over the Internet at high

22 speeds. The encryption system prevents unauthorized viewing or copying of the media (this is very

23 important to the media companies), and the decoding system, or "player", plays the media on the

24 consumer's computer. The Debtor currently has nine pending patents on its technology. Attached

25 hereto as Exhibit "Z" is a list of the Debtor's current pending patents.

26 18. Notwithstanding Stanley/Fenne's misrepresentations to the public and the Debtor's

27 investors that he is an expert computer programmer, in reality, Stanley/Fenne never had the

28 technical background, training, or expertise to have developed any of the Debtor's technology.

-15-

1 Stanley/Fenne was a fugitive from justice who did not have a technical background and only posed

2 as a computer programmer named "Adam Michael Fenne."

3 19. The bulk of the work on the Debtor's Generation 1 technology was actually

4 performed by Troy Kisky ("Kisky"), a computer programmer employed by the Debtor. Because

5 Kisky was an employee and not an outside contractor, all intellectual property developed by Kisky

6 while employed by the Debtor is the Debtor's property. A copy of Kisky's 1999 IRS Form W-2

7 issued by the Debtor is attached hereto as Exhibit "J."

8 20. As previously discussed, the Debtor's board ousted Stanley/Fenne in November of

9 1999. The current Generation 2 technology was developed beginning in late 1999 by the

10 Debtor's outside programming contractor Loco Labs in San Jose, California. A copy of Loco

11 Labs' 1999 IRS Form 1099 (in the amount of \$1,033,709.57) issued by the Debtor is attached

12 hereto as Exhibit "4." Because the current technology offered by the Debtor was developed by an

13 outside contractor, most of whose work was done after Stanley/Fenne's departure from the Debtor,

14 Stanley/Fenne has no interest in the Debtor's Generation 2 technology. Needless to say,

15 Stanley/Fenne has no interest in the Debtor's Generation 3 technology currently being developed

16 because all of the Debtor's Generation 3 technology was developed after Stanley/Fenne was ousted

17 from the Debtor.

18 21. Notwithstanding the fact that Stanley/Fenne did not develop any of the Debtor's

19 technology, the Debtor's nine pending patents, filed between July 12, 1999 and October 28, 1999,

20 are registered in the name of "Adam Michael Fenne." Nevertheless, all of "Adam Michael

21 Fenne's" intellectual property belongs to the Debtor. On July 14, 1999, Stanley/Fenne executed,

22 as "Adam Michael Fenne," an Assignment of Intellectual Property Rights Agreement (the "IP

23 Assignment") with the Debtor. A copy of the IP Assignment is attached hereto as Exhibit "5." As

24 indicated in the IP Agreement, Stanley/Fenne assigned all of his right, title, and interest in his

25 inventions since January 1, 1987 to the Debtor. Accordingly, to the extent Stanley/Fenne actually

26 developed any intellectual property while he was an employee of the Debtor, such intellectual

27 property belongs to the Debtor. As discussed above, the Debtor does not believe Stanley/Fenne

28 developed any of the Debtor's technology. Such assignments are standard in the technology

-16-

1 entered into a Severance Agreement dated December 27, 1999 (the "Severance Agreement"). A  
2 copy of the Severance Agreement is attached hereto as Exhibit "6." Stanley/Fenné's assertion that  
3 the \$660,000 payment referenced in the Severance Agreement is consideration for Stanley/Fenné's  
4 assigning intellectual property to the Debtor is nonsensical because the Debtor already owned all of  
5 its intellectual property at that time.

6 23. After Stanley/Fenné was ousted from the Debtor, Stanley/Fenné started several new  
7 companies including companies known as Landragon.com, Allos.com, Axistar.com, and  
8 Lazarventures.com. As indicated in the Severance Agreement sections 3.1 and 3.2,  
9 Stanley/Fenné is prohibited from using the Debtor's intellectual property and from competing with  
10 the Debtor. Furthermore, on October 10, 1999, Stanley/Fenné and the Debtor entered into a  
11 Confidentiality and Trade Secret Agreement (the "Confidentiality Agreement") whereby  
12 Stanley/Fenné agreed not to disclose, remove, or use any of the Debtor's proprietary technology  
13 A copy of the Confidentiality Agreement is attached hereto as Exhibit "7." The Debtor is informed  
14 that Stanley/Fenné is currently using the Debtor's media player on the Lazarventures.com  
15 website and intends to take action to enjoin such use. Note that the Agreement in Principal dated  
16 May 6, 2000 between Stanley/Fenné and the Debtor, referred to in the Opposition, which  
17 purportedly allows Stanley/Fenné to use the Debtor's media player, never became effective because  
18 its conditions precedent were never satisfied. To the extent Stanley/Fenné relied on the Agreement  
19 in Principal to give the Debtor any source codes, such intellectual property, as discussed above, is  
20 already the Debtor's property than was illegally taken by Stanley/Fenné (see Confidentiality  
21 Agreement).

22 1 declare under penalty of perjury under the laws of the United States of America that the  
23 foregoing is true and correct.

24 Executed this 22 day of August 2000, at San Jose, California.

25 \_\_\_\_\_  
26 \_\_\_\_\_  
27 \_\_\_\_\_  
28 \_\_\_\_\_  
Peter H. Foley

Case No.: STATE OF CALIFORNIA, CENTRAL JUSTICE CENTER

Verified Complaint for  
Fraudulent Concealment  
Fraudulent  
Misrepresentation;  
Recession; and  
For Equitable Lien  
Imposes Construction  
and for order for  
Reconveyance

as follows:

ALLEGATIONS

1. a California corporation organized under  
thorized to do business  
, at all times material

orporation,  
the laws  
ss in the  
l hereto,

and to  
the Trust

ment;

:

1 doing business  
2 district.  
3 2. Daren  
4 the aliases,  
5 (STANLEY/FENNE  
6 State of California  
7 arrest on or  
8 Virginia. STAN  
9 of the Board of  
10 3. Defense  
11 hereinafter (P  
12 California, County  
13 4. On or  
14 conversation )  
15 Pixelon's offic  
16 Bart Moore, SP  
17 the first time  
18 previously or  
19 that conversatio  
20 up all rights  
21 PIXEON, under  
22 Exhibit A and  
23 forth herein.  
24 5. Plain  
25 the defendants  
26 therefore sues  
27 will amend the  
28 once said names

in the County of **ADAM MICHAEL FENNE**  
dant, DAVID KIM ST  
//RIVERS') is an ind  
ernia, County of San  
about Wednesday, A  
LEY/FENNE/RIVERS wa  
! Directors of **PIXEL**  
dant **DAVID SNYDER**,  
SNYDER') is an indi  
nty of Orange, and  
r about April 10  
between **STANLEY/PE  
cers or directors,  
**STANLEY/PEKE/RIVERS**  
e to Pixelon as  
used the alias Adam  
on, he stated that  
to his stock and  
the written **Severan**  
incorporated by this  
tiff is ignorant of  
sued herein as DOB  
said defendants by a  
Complaint to allega  
have been received.**

ORANGE and within this judicial  
individual, who was residing in the  
Bernardino, California until his  
April 12, 2000 in Wise County,  
as an officer, employee and member  
of the [REDACTED] Corporation.  
Individual, residing in the State of  
within this judicial district.  
or 11, 2000, at a telephone  
LINE/RIVERS, on the hand, and  
Paul Ward, Stephanie Kites and  
verbally identified himself for  
David Stanley, whereas he had  
Michael Fenne with Pixelon. In  
he relinquished, waived and gave  
future monetary payments from  
the Agreement attached hereto as  
a reference as though fully set  
the true names and capacities of  
S 1 through 500, inclusive, and  
such fictitious names. Plaintiff  
their true names and capacities

1. 6. Plaintiff is informed and believes and based thereon  
2. alleges that the fictitiously named defendants are responsible for  
3. the occurrences herein alleged, and plaintiff's damages as herein  
4. alleged, were proximately caused by the acts and omissions of each  
5. fictitiously named defendant, and each fictitiously named defendant  
6. is legally liable to plaintiff as herein alleged.  
7. 7. Plaintiff is further informed and believes and based  
8. thereon alleges that each of the fictitiously named defendants was  
9. the agent, servant, employee, representative, alter-ego or each of  
10. the remaining defendants, and, in doing the things hereinafter  
11. alleged, was acting within the course and scope of such capacity.  
12. 8. Plaintiff is further informed and believes and on that  
13. basic alleges that Defendants STANLEY/PENNE/RIVERS and DOBBS 1  
14. through 500, inclusive, were co-conspirators acting in furtherance  
15. of a common plan and scheme to defraud plaintiff as set forth  
16. herein below, or acting with actual, constructive knowledge or  
17. notice thereof and with the intent to adopt, ratify and further  
18. said conspiracy by their individual acts herein alleged.  
19. **FIRST CAUSE OF ACTION**  
20. (Fraudulent Concealment and Suppression)  
21. (Against Defendants STANLEY/PENNE/RIVERS and DOBBS 1-100)  
22. 9. Plaintiff hereby incorporates paragraphs 1 through 8,  
23. inclusive, of this Complaint and re-alleges same as though fully  
24. set forth herein.  
25. 10. On or about December 27, 1999, PIXELON and  
26. STANLEY/PENNE/RIVERS entered into a written Severance Agreement  
27. ("Agreement") in Orange County, California and within this judicial  
28. district. A true and correct copy of said Agreement is attached

1. hereto as Exhibit A and incorporated by this reference as though  
2. set forth in full herein.

3. 11. At all times material hereto, defendants, and each of  
4. them, despite a duty to disclose such material information to  
5. plaintiff, defendants, and each of them, fraudulently,  
6. intentionally, and wantonly concealed and suppressed from  
7. plaintiff, by way of example and not limitation, the fact that Adam  
8. Michael Penne was an alias, and that true name and identity of the  
9. individual entering into the agreement was that of David Kim  
10. Stanley. Further, defendants, and each of them, fraudulently,  
11. intentionally, and wantonly concealed and suppressed from plaintiff  
12. that David Kim Stanley had pleaded guilty to fraud charges in  
13. Virginia and Tennessee, was a fugitive from the Commonwealth of  
14. Virginia, and was under a court order to pay full restitution to  
15. his victims. Plaintiff is informed and believes and thereon  
16. alleges that defendants' concealments and suppressions, as  
17. described above, were made with the intent to induce plaintiff to  
18. enter into the Agreement, and performing under the Agreement, which  
19. included certain payments of money and stock from Plaintiff to  
20. STANLEY/PENNE/RIVERS.  
21. 12. Defendants' concealment and suppression of the facts set  
22. forth herein above was deliberate, and was intended to mislead  
23. plaintiff, and did in fact mislead plaintiff into entering into and  
24. performing the Agreement with STANLEY/PENNE/RIVERS. In so  
25. performing under the Agreement, Plaintiff made payments to  
26. STANLEY/PENNE/RIVERS, which were in turn used to purchase real  
27. property in Big Bear City/Erwinlake, an Bernardino County, State of  
28. California, located at 2170 Mariposa Lane, Big Bear City.

EXHIBIT 1  
PAGE 20

EXHIBIT 1  
PAGE 2

1 California, Legal Description: PTN N 662.80. FT OP E 1/2 NW 1/4 NW  
2 1/4 SEC 29 TP 2. Attached hereto and incorporated by this  
3 reference as Exhibit B is a true and correct copy of a letter dated  
4 APRIL 13, 2000 from David Snyder to the Law Office of Collins and  
5 Collins, with a copy sent to PIXELOW's Chairman of the Board, Paul  
6 Hard, indicating that money under the Agreement was used to  
7 purchase the aforementioned real property under name of the shell,  
8 Land Dragon, Inc. which is actually entitled LANDRAGON DEVELOPMENT  
9 CORPORATION, and is controlled by individual defendant  
10 PENNE/STANLEY/RIVERS. Thereafter the property was transferred  
11 without proper consideration, and with the intent to defraud and  
12 defraud creditors to defendant SNYDER, who is now record owner of  
13 the subject property.

14 13. As a direct and proximate result of defendants' conduct,  
15 plaintiff has suffered damages in a sum of no less than \$266,000,  
16 plus loss of goodwill, reputation and business.

17 14. The aforementioned acts of defendants, and each of them,  
18 were willful, oppressive, fraudulent and malicious; therefore  
19 plaintiff is entitled to punitive damages.

20

21 **SECOND CAUSE OF ACTION**

22 (Fraudulent Misrepresentation)

23 (Against Defendants STANLEY/FENNE/RIVERS and DOES 1-100)

24 15. Plaintiff hereby incorporates paragraphs 1 through 14,  
25 inclusive, of this Complaint and re-alleges same as though fully  
set forth herein to the extent consistent with this Cause of  
Action.

26

27

28

1 16. In entering into the Agreement, defendants represented  
2 that the identity of the person entering into the Agreement with  
3 PIXELOW was *chael Fenne*.

4 17. Plaintiff is informed and believes and thereon alleges  
5 that defendants' representation to plaintiff as described in the  
6 preceding paragraph was made with the intent to induce plaintiff to  
7 enter into and perform the Agreement.

8 18. Plaintiff is informed and believes and thereon alleges  
9 that at the time defendants made such representation and entered  
10 into the Agreement, defendants made such representation knowing it  
11 to be false with intent to defraud and deceive plaintiff and to  
12 induce Plaintiff to act in the manner alleged herein.

13 19. In reliance on the representation of defendants as  
14 described herein, plaintiff entered into the Agreement and  
15 performed all acts required by it to be performed under the  
16 Agreement.

17 20. Had Plaintiff known the true facts, that Fenne was merely  
18 an alias and that the true identity of the individual they were  
19 entering into said contract with was David Kim Stanley, and that  
such individual was a convicted felon and fugitive they would have  
20 never entered into the Agreement, nor performed under it, by making  
21 payments to *PEANE/RIVERS*.

22 21. As a direct and proximate result of the acts of  
23 defendants, plaintiff has suffered damages in amounts according to  
24 proof, but in a sum no less than \$266,000.00.

25 22. The aforementioned acts of defendants, and each of them,  
26 were willful, oppressive, fraudulent and malicious; therefore  
27 plaintiff is entitled to punitive damages.

28

### THIRD CAUSE OF ACTION

(Against All Reasonable)

23. Plaintiff incorporates herein by reference paragraphs 1  
2 through 22, inclusive, of this Complaint and re-alleges same as  
3 though fully set forth herein to the extent consistent with this  
4 Cause of Action.

5

6 24. Plaintiff intends service of the summons and complaint in  
7 this action to serve as notice of rescission of the Agreement, and  
8 hereby offers to restore all consideration furnished by defendant  
9 defendants restore to Plaintiff the consideration furnished by  
10 Plaintiff, as set forth in the Agreement, plus the real property  
11 STANLEY/FERNE/RIVERS under the Agreement, on condition that all  
12 defendants purchase with the proceeds of the agreement,  
13 Plaintiff, as set forth in the Agreement, plus the real property  
14 that defendants purchased with the proceeds of the agreement,  
15 including but not limited to any appreciation in said property  
16 since purchase thereof.

17

18 25. As a result of entering into the written Agreement with  
19 defendants, Plaintiff has incurred and will continue to incur  
20 additional expenses as a result of entering into the Agreement,  
21 according to proof at the time of trial. Plaintiff prays leave to  
22 and this Complaint to insert the true amount of those expenses when  
23 they are ascertained.

24

25 **FOURTH CAUSE OF ACTION**

26 (For Equitable Lien, And to Impress  
27 Constructive Trust And For  
Order for Reconveyance)  
(against All Defendants)

#### FOURTH CAUSE OF ACTION

**FOR EQUITABLE LIEN, AND TO IMPRESS  
Constructive Trust And For  
Order For Reconveyance  
(Against All Defendants)**

26. Plaintiff incorporates herein by reference paragraphs 1  
2 through 25, inclusive, of this Complaint and re-alleges same as  
3 though fully set forth herein to the extent consistent with this  
4 Cause or Action.

27. Due to the circumstances as herein alleged, Defendant  
6 SNYDER is holding title to the property located at located at 2170  
7 Mariposa Lane, Big Bear City, California, Legal Description: PTN N  
8 662.80 FT OR E 1/2 NW 1/4 NW 1/4 SEC 29 TP 2. in a constructive  
9 trust for the benefit of plaintiff PIXELON.

28. Plaintiff is informed and believes that Defendant SNYDER  
11 and DOES 1-100 has or will sell transfer or assign the property for  
12 the benefit of defendants and each of them and to the detriment of  
13 plaintiff PIXELON. Plaintiff is informed and believes that  
14 Defendant SNYDER and DOES 1-100 has or will take the proceeds from  
15 the sale of the property and invest same in real or personal  
16 property, and other tangible and intangible items and assets, or  
17 otherwise dissipate it in hindrance of creditors, including  
18 Plaintiff PIXELON.

19 29. Plaintiff is informed and believes that while Defendants,  
20 or their agents, representatives, or affiliates, have held the  
21 title to property and its proceeds they have received benefits  
22 therefrom in an amount unknown to plaintiff. Defendants should be  
23 required to account fully for all proceeds and profits.

24 30. By reason of the fraudulent manner in which defendants  
25 retained the subject property and/or its proceeds, Defendants are  
26 involuntary trustees holding the real and personal property and  
27 profits therefrom in a constructive trust for Plaintiff with the  
duty to reconvey the same to Plaintiff PIXELON forthwith.

4  
5 Plaintiff, Plaintiff plays for judgment against Defendants as  
4 follows:  
6  
1. For an order barring STANLEY/PENNE/RIVERS, and SNYDER,  
7 their agents, employees, representatives, and attorneys from any  
conveyance or encumbrance of any real property, without prior  
consent of the Court;  
8  
9 2. For an order barring STANLEY/PENNE/RIVERS, and SNYDER,  
10 and their agents, employees, representatives and attorneys from  
11 disposing of any assets, including cash, other than in the ordinary  
12 course of business and for value, without the prior consent of the  
13 Court;  
14 3. For an order barring STANLEY/PENNE/RIVERS, and SNYDER,  
15 and their agents, employees and attorneys from removing any money  
16 or property from the United States without the prior consent of the  
17 Court;  
18 4. For an order that Plaintiff be permitted to file a lis  
19 pendens against all real property standing in the name of Defendant  
20 STANLEY/PENNE/RIVERS, SNYDER, and Landragon Development Corp. as of  
21 the date this action was first filed, and as to any transfers  
22 thereof for less than value after said date.  
23 5. For an order requiring Defendant STANLEY/PENNE/RIVERS to  
24 account for and deposit with the Clerk of the Court all sums of  
25 money received by him directly or indirectly from PIXELON, INC.  
from th: Execution of the Severance Agreement with PIXELON,  
Dece: The present.

1  
2 That an order be made declaring the real property located  
3 at 2170 Mariposa Lane, Big Bear City, California 92314, legal  
4 description: FTN N 662.80 FT OF E 1/2 NW 1/4 NW 1/4 SEC 29 TP 2,  
5 personal property and cash, and any other asset or proceeds  
6 therefrom, which were purchased with the money paid under the  
7 severance agreement, be held in trust for Plaintiff, and/or  
8 equitable liens be established thereon to the extent wrongfully  
9 obtained funds from Plaintiff were used therefor, for reconveyance  
10 of the subject real property to Plaintiff PYREXON, for foreclosure  
11 of said lien, for an order requiring the assets to be sold for the  
payment of the lien, and for payment of the amount of the lien from

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VERIFICATION

I have read the foregoing Verified Complaint for: Fraudulent Concealment; Fraudulent Misrepresentation; Rescission; and For Equitable Lien. And To Impress Constructive Trust And For Order For Reconveyance, and know its contents.

I am the Chairman of the Board of Pixelon, Inc., which is the Plaintiff in this action. The matters stated in the foregoing document are true of my own knowledge.

Executed on this May 17, 2000, at San Juan Capistrano, California.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

  
Paul C. Ward, Jr.

EXHIBIT 1  
PAGE 24

EXHIBIT 2

OWN'D MATERIAL NO.	TITLE	SERIAL	FLILING NO.	ASSIGNMENT TO DATE	PICKELON FILED	STATUS	116-110
17954-11	REGULAR-BASED VIDEO FOR RELEASED DATA SUBMISSION FOR RELEASED VIDEO	09/351,618	July 12, 1999	Yes	Waiting examination	116-110	17954-11
17954-12	MATCHING OF A REDUCED SPECTRUM LIGHTNING SOURCE WITH VIDEO ENCODING PROGRAM VARIABLE FOR INCREASED DATA COMPRESION RATIOS	09/351,028	July 12, 1999	Yes	Waiting examination	116-110	17954-12
17954-13	INTERNET BROADCASTING SYSTEM UTILIZING CACHING AND ENCRYPTION MULTIMEDIA CENTER	09/428,413	Oct. 28, 1999	Yes	Waiting examination	116-110	17954-13
17954-14	INSTANTANEOUS VIEWER RESPONSE SYSTEM AND METHOD FOR INTERNET BROADCASTING	09/428,394	Oct. 28, 1999	Yes	Waiting examination	116-110	17954-14
17954-15	DYNAMIC INSERION OF TARGETED SUPPORTED VIDEO MESSAGES INTO MULTIMEDIA INTERNET BROADCASTS	09/428,387	Oct. 28, 1999	Yes	Waiting examination	116-110	17954-15
17954-16	INTERNET BROADCAST SYSTEM COMPRESSION OF A REDUCED SPECTRUM LIGHTNING SOURCE WITH VIDEO	09/429,363	Oct. 28, 1999	Yes	Waiting examination	116-110	17954-16
17954-21	REVERSE SPECTRAL RESPONSE COMPRESSION OF A VIDEO SIGNAL	09/428,392	Oct. 28, 1999	Yes	Waiting examination	116-110	17954-21
17954-22	MATCHING OF A REDUCED SPECTRUM LIGHTNING SOURCE WITH VIDEO ENCODING PROGRAM VARIABLE FOR INCREASED DATA COMPRESION RATIOS	09/428,395	Oct. 28, 1999	Yes	Waiting examination	116-110	17954-22
17954-23	REGULAR-BASED DATA COMPRESION SUBMISSION FOR RELEASED DATA ENCODING PROGRAM VARIABLE FOR INCREASED DATA COMPRESION RATIOS	09/428,396	Oct. 28, 1999	Yes	Waiting examination	116-110	17954-23

STATUS OF PENDING PATENT APPLICATIONS  
AS OF FEBRUARY 7, 2000

1. BRITISH ARMED FORCES AMERICAN SECTION 1945

EXHIBIT 3



VOID  CORRECTED

Name, street address, city, state, ZIP code, and telephone no.		1 Name	OMB No. 1545-0113
PIXELON, COM 31732 RANCHO VIEJO RD. SUITE "D" SAN JUAN CAP., CA 92675 919-248-4655		\$ 1 Rent \$ 2 Projects \$ 3 Other income	<b>1999</b> Miscellaneous Income
PAYER'S Federal identification number		4 Federal income tax withheld	Form 1099-MISC
RECIPIENT'S name	RECIPIENT'S identification number	5 Paying out process	Copy C
LOCO	6 Medical and health care expenses	6 Nonemployee compensation	For Payee
LOCO	7 Royalties	7 033-719	For Privacy Act and Payments
Street address (including apt. no.)	8 Other income	8 Form 1099-INT (Form 1099-INT is used for certain dividends or interest payments to nonresident aliens or to foreign corporations or partnerships. <input type="checkbox"/> If you choose to use Form 1099-INT, you must file Form 1099-INT with Form 1099-MISC.)	For Privacy Act and Redaction Act Notices and Instructions for completing this form, see the 1999 Instructions for Forms 1099- INT, 1099-INT and W-2.)
1347 THE ALAMEDA, # 7 City, state, and ZIP code	9 Crop insurance proceeds	9 State income tax withheld	
SAN JOSE, CA 95126	10 Crop insurance proceeds	10 State income tax withheld	
Account number (optional)	11 State/Federal state number	11 State/Federal state number	
Form 1099-MISC			

PAYER'S name, street address, city, state, ZIP code, and telephone no.		1 Void <input type="checkbox"/> <input type="checkbox"/> CORRECTED	
PIXELON, COM 31732 RANCHO VIEJO RD. SUITE "D" SAN JUAN CAP., CA 92675 919-248-4655		2 Name	OMB No. 1545-0118
PAYER'S Federal identification number		3 Federal income tax withheld	Form 1099-MISC
RECIPIENT'S name	4 Federal income tax withheld	4 Paying out process	Copy C
FRED MILLER	5 Medical and health care expenses	5 Nonemployee compensation	For Payee
Street address (including apt. no.)	6 Royalties	6 4-308-00	For Privacy Act and Payments
22835 MINONA DRIVE City, state, and ZIP code	7 Other income	7 State or name of contractor produced by a firm (product or name <input type="checkbox"/> <input type="checkbox"/> State income tax withheld	Redaction Act Notices and Instructions for completing this form, see the 1999 Instructions for Forms 1099- INT, 1099-INT and W-2.)
GRAND TERRACE, CA 92313	8 Crop insurance proceeds	8 Form 1099-INT (Form 1099-INT is used for certain dividends or interest payments to nonresident aliens or to foreign corporations or partnerships. <input type="checkbox"/> If you choose to use Form 1099-INT, you must file Form 1099-INT with Form 1099-MISC.)	
Account number (optional)	9 Crop insurance proceeds	9 State income tax withheld	
Form 1099-MISC			

Department of the Treasury - Internal Revenue Service

PAYER'S name, street address, city, state, ZIP code, and telephone no.		1 Void <input type="checkbox"/> <input type="checkbox"/> CORRECTED	
PIXELON, COM 31732 RANCHO VIEJO RD. SUITE "D" SAN JUAN CAP., CA 92675 919-248-4655		2 Name	OMB No. 1545-0118
PAYER'S Federal identification number		3 Federal income tax withheld	Form 1099-MISC
RECIPIENT'S name	4 Federal income tax withheld	4 Paying out process	Copy C
PATRICIA MODICA	5 Medical and health care expenses	5 Nonemployee compensation	For Payee
Street address (including apt. no.)	6 Royalties	6 4-308-00	For Privacy Act and Payments
360 LILY POND ROAD City, state, and ZIP code	7 Other income	7 State or name of contractor produced by a firm (product or name <input type="checkbox"/> <input type="checkbox"/> State income tax withheld	Redaction Act Notices and Instructions for completing this form, see the 1999 Instructions for Forms 1099- INT, 1099-INT and W-2.)
BARKSVILLE, NY 12768	8 Crop insurance proceeds	8 Form 1099-INT (Form 1099-INT is used for certain dividends or interest payments to nonresident aliens or to foreign corporations or partnerships. <input type="checkbox"/> If you choose to use Form 1099-INT, you must file Form 1099-INT with Form 1099-MISC.)	
Account number (optional)	9 Crop insurance proceeds	9 State income tax withheld	
Form 1099-MISC			

EXHIBIT 5

Fenne Empl  
Aya

## ASSIGNMENT OF INTELLECTUAL PROPERTY RIGHTS AGREEMENT

This Assignment is made and entered into on July 14, 1999, by and between Assignor, ADAM MICHAEL FENNE ("FENNE") and Assignee, PIXELON, Inc. ("PIXELON"), a California corporation, with its principal place of business at 31726 Rancho Viejo Road, Suite 121, San Juan Capistrano, California 92675 regarding intellectual property rights of FENNE under the following terms and conditions:

### 1. INTENT OF ASSIGNMENT

1.1. For full and valuable consideration, receipt of which is hereby acknowledged, FENNE hereby sells, transfers and assigns to PIXELON all of FENNE's right, title and interest in his inventions since January 1, 1997.

### 2. DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

2.1. "Inventions" means all discoveries, developments, designs, improvements, inventions, formulas, software programs, processes, techniques, know-how, negative know-how, data, research, techniques, and technical data (whether or not patentable or registrable under patent, copyright or similar statutes and including all rights to obtain, register, perfect, and enforce those proprietary interests) that are related to or useful in the Company's present or future business or result from use of property owned, leased or contracted for by the Company. "Inventions" shall also include anything that derives actual or potential economic value from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use.

2.2. "Proprietary Information" means information (a) that is not known by actual or potential competitors of PIXELON or is generally unavailable to the public, (b) that has been created, discovered, developed or otherwise become known to PIXELON or in which property rights have been assigned or otherwise conveyed to PIXELON and (c) that has material economic value or potential material economic value to PIXELON's present or future business. "Proprietary Information" shall include trade secrets (as defined under California Civil Code section 3426.1(d) and all other discoveries, developments, designs, improvements, inventions, formulas, software programs, processes, techniques, know-how, negative know-how, data, research, techniques, technical data, customer and supplier lists, and any modifications or enhancements of any of the foregoing, and all program, marketing, sales, or other financial or business information disclosed to PIXELON by FENNE, whether directly or indirectly in writing or orally or by drawings or observation, which has actual or potential economic value.

2.3. "Rights" means all patents, trademarks, service marks and copyrights and other rights pertaining to Proprietary Information, Inventions, or both.

### 3. INVENTION ASSIGNMENT

3.1. All Proprietary Information and Inventions developed by FENNE from January 1, 1997 through the completion of FENNE's relationship to Pixelon, except those listed in Exhibit "B", shall be the sole property of PIXELON and PIXELON shall be the sole owner of all rights.

3.2. FENNE assigns to PIXELON all rights that FENNE may have or acquire and any other rights that he may have or acquire pertaining to Proprietary Information and Inventions.

### 4. PROPERTY RIGHT REGISTRATIONS

4.1. FENNE shall assist PIXELON or any person designated by it in every proper way (but at PIXELON's expense) to obtain and from time to time to enforce the Rights including registrations and applications for patents, copyrights, or other intellectual property rights in any and all countries.

4.2. Exception to Assignment of Inventions: Any provision in the Agreement requiring FENNE to assign his rights in all inventions shall not apply to an invention that qualifies fully under the provisions of California Labor Code § 2870, the terms of which are set forth on Exhibit "A" to this Agreement.

4.3. FENNE has listed in Exhibit "B" all inventions or improvements relevant to the subject matter or Employment that have been made or conceived of or first reduced to practice by him alone or jointly with others before January 1, 1997 and that are excluded from the operation of this Agreement.

### 5. REPRESENTATIONS AND WARRANTIES

FENNE warrants and represents that the following statements are true to FENNE's knowledge and belief:

(a) This Assignment is exclusive and made solely to PIXELON. The inventions have not been sold or assigned to any other party, except if notice of other assignment has been given to PIXELON prior to the execution of this Assignment, specifically describing the other assignment;

### 6. EFFECT ON HEIRS AND SUCCESSORS

6.1. This Assignment and each of its provisions shall be binding on and shall inure to the benefit of the respective heirs, devisees, legatees, executors, administrators, trustees, successors and assigns of the parties to this Assignment.

**7. AMENDMENTS TO ASSIGNMENT**

7.1 This Assignment may be amended only by a writing signed by the party against whom or against whose successors and assigns enforcement of the change is sought.

**8. EFFECT OF PARTIAL INVALIDITY**

8.1 If any term or provision of this Assignment or any application thereof shall be held invalid or unenforceable, the remainder of this Assignment and any application of the terms and provisions shall not be effected thereby, but shall remain valid and enforceable.

**9. CONTROLLING LAW**

The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

**10. ATTORNEY'S FEES**

In any action arising from the alleged breach of this Agreement, or to enforce this Agreement, the final prevailing party will recover its reasonable attorneys' fees, costs, expenses, and any injunction prohibiting such wrongful conduct from engaging in said manner, or specifically enforcing the terms of this Agreement, as the case may be. Any litigation concerning this agreement shall be venued in Orange County, California.

**11. FAILURE TO OBJECT**

The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement, shall not be construed as a waiver of that conduct or any future breach or subsequent wrongful conduct.

**12. VALIDITY OF PROVISIONS**

If any part, term or provision of this Agreement is declared and determined by any court or arbitrator to be illegal or invalid, such declaration and determination shall not effect the validity of the remaining parts, terms or provisions. Any illegal or invalid part, term or revision shall be deemed not a part of this Agreement.

**13. REPRESENTATION**

All parties have been advised and have had an opportunity to consult with legal counsel of their choosing regarding the force and effect of the terms set forth herein. This Agreement shall be deemed to be jointly prepared by the parties and therefore any ambiguity or uncertainty shall be interpreted accordingly.

**14. COUNTER-PARTS**

This Agreement may be executed in two or more counter-parts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument.

**15. NOTICE**

All notices pertaining to this Agreement shall be in writing and shall be transmitted either by personal hand delivery, or through the facilities of the United States Postal Service, certificated and return receipt requested.

**16. HEADINGS**

The various headings in this Agreement are inserted for convenience only and shall not affect this Agreement or any portion thereof.

NOW THEREFORE, for full and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, FENNE hereby assigns, transfers and conveys to PIXELON all of FENNE's right, title, and interest in all Inventions, Proprietary Information and Rights developed during the period January 1, 1997 through the completion of FENNE's relationship with PIXELON, with the exception of those listed in Exhibit "B" and made a part hereof. This Assignment may be executed in multiple counterparts, each of which shall constitute an original, and together shall constitute one and the same agreement.

The parties have executed this Agreement on the dates indicated opposite their signatures.

DATED:

*7/14/97*

PIXELON, INC.

By: *Paul C. Schlesinger*  
Is: *Paul C. Schlesinger*

ADAM MICHAEL FENNE

DATED: *7/14/97*  
By: *Adam Michael Fenne*

[www.pixelon.com](http://www.pixelon.com)

EXHIBIT 5  
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EXHIBIT 5  
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**EXHIBIT A**

**CALIFORNIA LABOR CODE SECTION 2870**

**Section 2870 of the California Labor Code provides as follows:**

(a) Any provision in an employment agreement which provides that an employee shall assign or offer to assign any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employee's equipment, supplies, facilities, or trade secret information except for those inventions that either:

- (1) Relate at the time of conception or reduction to practice of the invention to the employer's business or actual or demonstrably anticipated research or development of the employer; or
- (2) Result for any work performed by the employee for the employer.
- (3) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.

**EXISTING INVENTIONS AND IMPROVEMENTS**

The following is a list of all inventions or improvements relevant to the subject matter of Employment by PIXELON that have been made or conceived of or first reduced to practice by FENNE, alone or jointly with others before Employment by PIXELON:

1.

2.

3.

4.

*Exclusion of Assignment*

**EXHIBIT B**

**EXHIBIT 5**

**EXHIBIT 5**

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**PAGE 37**

## SEVERANCE AGREEMENT

THIS SEVERANCE AGREEMENT (the "Agreement") is made as of this 27th day of December 1999, by and between Pixelon, Inc., a California corporation (the "Company") and Adam Michael Feine ("Feine").

### RECITALS:

- A. The Company is primarily engaged in the business of developing and operating an Internet broadcasting network;
- B. Feine is the founder of the Company and has agreed to resign as an officer, employee and member of the Board of Directors of the Company;
- C. The Company wishes to accept Feine's resignation; and
- D. As a condition of the Company entering into this Agreement with Feine and executing a general release in favor of Feine, Feine has agreed to restrict his ability to enter into competition with the Company and to execute a general release in favor of the Company.

NOW, THEREFORE, in consideration of the foregoing and the agreements, covenants and conditions set forth herein, Feine and the Company hereby agree as follows:

### ARTICLE I

#### SEVERANCE BENEFITS

##### 1.1 Purchase of Shares.

1.1.1. Feine represents, warrants and covenants to the Company that he owns 3,000,000 shares of the Company's common stock free and clear of all liens and encumbrances. In aggregate consideration of six hundred and sixty thousand dollars (\$660,000), the Company shall purchase the following from Feine: (i) 2,000,000 of the 3,000,000 shares of common stock owned by Feine, and (ii) any right, title or interest Feine may have in any capital stock, warrants, options or other securities of the Company other than the 1,000,000 shares of the Company's common stock which Feine will continue to own after the purchase described in this Section 1.1.1. Such securities shall include, but not limited to, an option to purchase four million one hundred thousand (\$4,100,000) shares of the Company's common stock and a warrant previously issued to Feine under which Feine was entitled to purchase three million (3,000,000) shares of the Company's Common Stock at a price of \$4.50 per share, exercisable once the Company has been a public company for one year and has maintained an average share price of \$15.00 for one year for. Upon

execution of this Agreement, Fenne shall deliver to the Company 2,000,000 shares of common stock and cause title to such shares to transfer to the Company. In addition, Fenne shall deliver any documents reflecting ownership in any options or warrants granted to Fenne by the Company.

1.1.2. Fenne acknowledges that he has previously received nine thousand dollars (\$9,000) of the \$660,000 purchase price described in Section 1.1.1, in cash, from the Company, and that the payment for the securities to be purchased pursuant to Section 1.1.1 shall be reduced by this \$9,000. The payments to be made by the Company to Fenne for the purchase of the securities described in Section 1.1.1 above shall be further reduced by fifty seven thousand four hundred and ninety-three dollars (\$57,493), which represents the amount owed by Fenne to the Company for payment of personal expenses, including rent to be paid by the Company on Fenne's apartment for the month of January 2000.

1.1.3. The Company shall make payments totaling \$593,507 to Fenne, representing the \$660,000 consideration for the purchase of Fenne's securities pursuant to Section 1.1.1 above, reduced by the \$9,000 previously paid by the Company to Fenne and the \$57,493 owed by Fenne to the Company for the payment of personal expenses described in Section 1.1.1 above. The Company shall make such payments according to the following schedule:

- (a) Two hundred and sixty-six thousand dollars (\$266,000) on December 27, 1999;
- (b) Fifteen thousand dollars (\$15,000) per month, to be paid on the 15<sup>th</sup> of each month from January 2000 to September 2001, inclusive;
- (c) Twelve thousand, five hundred and seven dollars (\$12,507) on October 15, 2001.

Provided, however, that the payments described above are expressly conditioned on Fenne's full compliance with the terms of this Agreement. Fenne shall forfeit any right to such payments if he commits any material breach of this Agreement, but the Company shall retain all right, title and interest in the 2,000,000 shares conveyed transferred to the Company pursuant to Section 1.1.1 above notwithstanding Fenne's forfeiture of his right to any or all of such payments.

1.2. **Return of Equipment.** The Company agrees to return to Fenne certain audio equipment which was maintained in Fenne's office at the Company and which was purchased by Fenne prior to the formation of the Company, including a Neuman microphone and JBL speakers.

1.3. **Severance Agreement with David Snyder.** The Company shall enter into a severance agreement with David Snyder under which Mr. Snyder receives a severance payment of ten thousand dollars (\$10,000) per month for six months, with payments to begin on November 30, 1999 and to be made semi-monthly and the Company agrees to pay up to fifteen thousand dollars (\$15,000) in verifiable business expenses relating to the Company incurred by Mr. Snyder.

1.4. **Withholdings and Deductions.** Any severance benefits paid under this Agreement shall be subject to such withholdings and deductions by the Company as are required by law.

## ARTICLE II

### FENNE'S OBLIGATIONS

2.1. **Resignation.** Upon execution of this Agreement, the Company accepts Fenne's resignation as a member of the Company's board of directors and as the Chief Technology Officer and an employee of the Company, effective as of December 16, 1999, the date Fenne submitted his resignation to the Company.

2.2. **Assignment of Leases.** Fenne agrees to accept an assignment from the Company of the leases, including any and all liabilities thereunder, on Fenne's personal residence and the Lincoln Navigator used by Fenne, effective January 1, 2000. Fenne shall, if necessary to effectuate the assignment of such leases and/or the release of the Company from any and all obligations thereunder, grant to the lessors a security interest in Fenne's right to the payments described in Section 1.1.1 above. If the lessor of either such lease will not permit the Company to full assign its rights and obligations under a lease to Fenne, the Company shall deduct the total remaining monetary obligations owed by the Company under the lease or leases which cannot be assigned from the payments to Fenne described in Section 1.1.1 above. Such deductions shall be made from the payments in the order they come due until the total remaining monetary obligations under such lease or leases have been deducted.

2.3. **Agreement with Troy Kisky.** Fenne will use his best efforts to assist the Company in entering into a consulting agreement with Troy Kisky with a term of three years under which Mr. Kisky provides consulting services with regard to the Pixelon Player in consideration for payment of \$10,000 per month for twenty (20) hours per week of consulting services, and two hundred and fifty dollars (\$250) per hour for services provided in excess of twenty hours per week. Fenne shall also use his reasonable efforts to facilitate communications between Kisky and the Company and to ensure that Kisky fully performs the consulting services pursuant to the consulting agreement.

2.4. **Cooperation with Company.** For a period of three (3) years from the date of this Agreement, Fenne shall provide his full cooperation to the Company in connection with the development or maintenance of the Company's technology, and shall make himself reasonably available by telephone to respond to inquiries by the Company or its officers, employees or agents relating to such technology, provided, however, that Fenne shall not be obligated to expend more than twenty (20) hours in any one calendar month in responding to such inquiries.

2.5. **Prohibited Activities.** Fenne acknowledges that upon execution of this Agreement he will not be an employee, representative or agent of the Company for any purpose. Fenne acknowledges that upon execution of this Agreement he will have no authority to engage in, and will

not attempt to engage in, any activities on behalf of the Company, including but not limited to the following:

- (a) hiring or firing employees or independent contractors, including employees or independent contractors providing temporary services;
- (b) entering into any contracts, whether oral or written, on behalf of, , say; or
- (c) communicating with third parties on behalf of the Company.

In addition, beginning on the date of this Agreement Fenne agrees not to contact, by telephone, e-mail, in person, in writing, or any other means, any employees or directors of the Company other than Brian MacDonald, Bart Moore or Paul Ward, provided, however, that Fenne may communicate with employees or directors of the Company other than Brian MacDonald, Bart Moore or Paul Ward if such communications are not initiated by Fenne.

**2.6 Lock-up.** In the event that the Company shall make a public offering of the Company's Common Stock, Fenne, on behalf of Fenne and any successor in interest to any shares of the Company's capital stock owned by Fenne, agrees that such shares shall not be sold or otherwise transferred by Fenne or by any successor in interest of Fenne for a period of three hundred and sixty (360) days from the date of the initial closing of such public offering, unless waived by the Company. The certificates for the Shares issuable hereunder shall contain the following restrictive legends:

"These securities have not been registered under the Securities Act of 1933. They may not be sold, offered for sale, pledged or hypothecated in the absence of a registration statement in effect with respect to the securities under such Act or an opinion of counsel satisfactory to the Company that such registration statement is not required or unless sold pursuant to Rule 144 of such Act.

The shares represented by this certificate shall not be transferable for a period of three hundred and sixty (360) days following the initial closing of an initial public offering of the Company's common stock unless such restriction is waived in writing and delivered to the Company's transfer agent by the Company."

**2.7 Delivery of Communications and Agreements.** Upon execution of this Agreement Fenne shall deliver to the Company any and all e-mail, correspondence or other communications of or pertaining to the Company or any of its officers, directors, employees, or any third parties with which it has done business sent or received by Fenne at any time from January 1, 1997 to November 13, 1999, regardless of the medium upon which it is stored, including, but not limited to, all e-mails sent or received by Fenne at the Company's offices, provided, however, that Fenne is obligated to deliver e-mail, correspondence or other communications which are strictly personal and which do not relate in any way to the Company, its officers, directors, employees or any parties with which it has done or sought to do business.

**2.8 Assignment of Rights to Domain Names and URLs.** Fenne hereby assigns to the Company any rights, title and interest he may have in any domain name, Internet address, uniform resource locator, or other name or identifier of any type whatsoever relating to an Internet website or other location on the Internet relating to the Company, including but not limited to "Pixelon.com" and "Pixelon.net," provided, however, that Fenne may retain any rights he has in the domain name "lazarventures.com."

**2.9 Revision of Information.** Fenne shall provide all information required by the Company to comply with any and all regulatory obligations to which it may be subject. Fenne shall provide the Company with all information required under this Section 2.9 within five (5) days of a request by the Company for such information. However, should Fenne believe he must provide any information, he shall notify the Company in writing within fifteen (15) days, and the Company may, at its option, amend and conclude a new agreement. **ARTICLE III** *CONFIDENTIALITY AGREEMENT*

**3.1 Non-Disclosure of Confidential Information.** Fenne hereby acknowledges and agrees that the duties and services to be performed by Fenne under this Agreement are special and unique and that as a result of his prior employment by the Company and by his retention hereunder, Fenne has and will acquire, develop and use information of a special and unique nature and value that is not generally known to the public or to the Company's industry, including but not limited to, certain records, secrets, documentation, software programs, source codes, technological information or innovations (including but not limited to any of the Company's intellectual property, know-how, price lists, ledgers and general information, employee records, mailing lists, customer lists, customer profiles, prospective customer lists, accounts receivable and payable ledgers, financial and other records of the Company or its affiliates, information regarding its customers or principals, and other similar matters); all such information being hereinafter referred to as "Confidential Information". Fenne further acknowledges and agrees that the Confidential Information is of great value to the Company and its affiliates and that the restrictions and agreements contained in this Agreement are reasonably necessary to protect the Confidential Information and the goodwill of the Company. Accordingly, Fenne hereby agrees that:

**3.1.1** Fenne will not, at any time, directly or indirectly, except as authorized by the Company for the benefit of the Company, divulge to any person, firm, corporation, limited liability company, or organization, other than the Company (hereinafter referred to as "Third Parties"), or use or cause or authorize any Third Parties to use, the Confidential Information, except as required by law; and

**3.1.2** Upon the execution of this Agreement, Fenne shall deliver or cause to be delivered to the Company any and all Confidential Information, including drawings, notebooks, keys, data and other documents and materials belonging to the Company or its affiliates which is in his possession or under his control relating to the Company or its affiliates, or the business of the Company (as defined herein), regardless of the medium upon

which it is stored, or any other property of the Company or its affiliates which is in his possession or under his control, including, but not limited to, the source code for the Player. Fenne recognizes that the unauthorized taking of any of the Company's trade secrets is a crime under Section 499(c) of the California Penal Code, and is punishable by imprisonment in a state prison or in a county jail for a time not exceeding one year, or by a fine not exceeding five thousand dollars (\$5,000), or both such fine and imprisonment. Fenne further recognizes that such unauthorized taking of the Company's trade secrets may also result in civil liability under the Uniform Trade Secrets Act, California Civil Code Section 3426, et seq., and that a willful taking may result in an injunction and an award against Fenne for the Company's attorney's fees and triple the amount of the Company's damages.

### 3.2 Restictive Covenants.

**3.2.1 Non-Competition Covenant.** Fenne acknowledges that the covenants set forth in this Section 3.2 are reasonable in scope and essential to the preservation of the Business of the Company. Fenne also acknowledges that he will be able to remain gainfully employed in such manner and to the extent as to provide a standard of living for himself, the members of his family and the others dependent upon him of at least the level to which he and they have become accustomed and may expect, notwithstanding the enforcement of the covenant set forth in this Section 3.2.1. In addition, Fenne acknowledges that the Company has obtained an advantage over its competitors as a result of its name, location and reputation that is characterized by near permanent relationships with customers, principals and other contacts which it has developed at great expense. Furthermore, Fenne acknowledges that competition by him following the termination of his employment with the Company would impair the operation of the Company beyond that which would arise from the competition of an unrelated third party with similar skills. Fenne hereby agrees that he shall not, for a period of two (2) years from the date of this Agreement, directly or indirectly, engage in or become directly or indirectly interested in any proprietorship, partnership, firm, trust, company, limited liability company or other entity, other than the Company (whether as owner, partner, trustee, beneficiary, stockholder, member, officer, director, employee, independent contractor, agent, servant, consultant, lessor, lessee or otherwise) that competes with the Company in the Business of the Company in the Restricted Territory (as each term is defined herein), other than an interest in a company listed on a recognized stock exchange in an amount which does not exceed five percent (5%) of the outstanding stock of such corporation, except that Fenne may engage in his current business of building an Internet satellite distribution network. For purposes of this Agreement, (i) the term "Business of the Company" shall include all business activities and ventures related to the development or use of technology for the transmission of audio and video content over the Internet, and the broadcasting of audio and video content over the Internet; and (ii) the term "Restricted Territory" means the United States of America and the continent of North America.

**3.2.2 Non-Solicitation Covenant.** Fenne hereby covenants and agrees that for a period of two (2) years from the date of this Agreement, he shall not (i) solicit for the purpose of developing technology used for the transmission of audio and video content over the Internet or for the broadcasting of audio or video content over the Internet, or endeavor to entice away from the Company any person, firm, corporation, limited liability company or other entity that was a customer of the Company at any time prior to the date of this Agreement or within the two-year period following the date of this Agreement, or (ii) induce, attempt to induce or hire any employee of the Company, other than Troy Kisky, to leave the employ of the Company, or in any way interfere with the relationship between any such employee and the Company.

### 3.3 Remedies.

**3.3.1 Injunction Relief.** Fenne expressly acknowledges and agrees that the Business of the Company is highly competitive and that a violation of any of the provisions of Sections 3.1 or 3.2 would cause immediate and irreparable harm, loss and damage to the Company not adequately compensable by a monetary award. Fenne further acknowledges and agrees that the time periods and territorial areas provided for herein are the minimum necessary to adequately protect the Business of the Company, the enjoyment of the Confidential Information, and the goodwill of the Company. Without limiting any of the other remedies available to the Company at law or in equity, or the Company's right or ability to collect money damages, Fenne agrees that any actual or threatened violation of any of the provisions of Sections 3.1 or 3.2 may be immediately restrained or enjoined by any court of competent jurisdiction, and that a temporary restraining order or emergency, preliminary or final injunction may be issued in any court of competent jurisdiction, upon twenty-four (24) hour notice and without bond. Notwithstanding anything to the contrary contained in this Agreement, the provisions of this Section shall survive the termination of this Agreement.

**3.3.2 Enforcement.** It is the desire of the parties that the provisions of Sections 3.1 or 3.2 be enforced to the fullest extent permissible under the laws and public policies in each jurisdiction in which enforcement might be sought. Accordingly, if any particular portion of Sections 3.1 or 3.2 shall ever be adjudicated as invalid or unenforceable, or if the application thereof to any party or circumstance shall be adjudicated to be prohibited by or invalidated by such laws or public policies, such section or sections shall be (i) deemed amended to delete therefrom such portions so adjudicated or (ii) modified as determined appropriate by such a court, such deletions or modifications to apply only with respect to the operation of such section or sections in the particular jurisdiction(s) so adjudicating on the parties and under the circumstances as to which so adjudicated.

## ARTICLE IV

## PROPRIETARY INFORMATION

4.1 **Definitions.** As used in this Agreement, the term "Proprietary Information" means information that has been created, discovered, developed or otherwise become known to the Company (including without limitation information created, discovered, developed or made known by Fenne from the period of January 1, 1997 through the date of this Agreement) and/or in which property rights have been assigned or otherwise conveyed to the Company, which information has commercial value in the Company's Business. By way of illustration, but not limitation, Proprietary Information includes trade secrets, processes, formulas, data and know-how, improvements, inventions, techniques, marketing plans, pricing of products, strategies, forecasts, customer lists and identity of suppliers of research or production services, including development of building blocks.

4.2 **Assignment of Rights to Proprietary Information and Inventions.** Subject to Section 4.4 below, all Proprietary Information and Inventions shall be the sole property of the Company and its assigns, and the Company and its assigns shall be the sole owner of all patents and other rights in connection therewith. Fenne hereby assigns to the Company any and all rights, title and interest he may have or acquire in such Proprietary Information and Inventions.

4.3 **Cooperation with Patent Applications.** Fenne agrees to, at the request of the Company, execute any and all applications for letters patent for any Inventions which were invented in whole or in part by Fenne, and for which applications are pending or have been filed on the Company's behalf, or which were invented during the time period of January 1, 1997 to the date of this Agreement and which relate to the Company's Business but for which applications have not been filed, and to execute any and all other papers and documents and do all other and further lawful acts that the Company may deem necessary or desirable to obtain letters patent on the Inventions, to secure the grant of such letters patent and to perfect and vest in the Company the entire right, title and interest in the Inventions, applications and letters patent.

Fenne agrees to execute such documents as the Company may deem necessary or appropriate to add and/or delete named inventor(s) to/from the patent applications which have been filed in the Company's name and which name Fenne as an inventor, in order to reflect the correct ownership and inventors of those patent applications as defined under the applicable laws in the opinion of the Company's patent counsel.

Fenne's obligation to assist the Company in obtaining and enforcing patents for Inventions in any and all countries is independent of his employment with or ownership in the Company, and shall continue for a period of fifteen (15) years from the date of this Agreement.

4.4 California Labor Code. The Company's right with regard to certain things invented or co-invented by Fenne are subject to Sections 2870-2872 of the California Labor Code, under which Fenne has no obligation to assign rights in an invention for which no equipment, supplies, facilities or trade secret information of the Company was used and which was developed entirely on Fenne's own time, and (a) which does not relate (1) to the business of the Company or (2) to the Company's actual or demonstrably anticipated research or development, or (b) which does not result from any work performed by Fenne for the Company.

4.5 **Delivery of Material.** Fenne shall, upon execution of this Agreement, return to the Company any and all tangible items of any nature relating to any intellectual property of the Company, including, but not limited to, any and all copies of code, including source code, for any programs developed, in the process of development or used by the Company or any of its employees or agents since January 1, 1997.

## ARTICLE V RELEASE

5.1 **Release.** The Company and Fenne, for itself or himself, and for its or his heirs, personal or legal representatives, executors, successors and assigns, shareholders, directors, officers, affiliates and agents, hereby releases and forever discharges the other and its or his respective heirs, personal or legal representatives, executors, successors and assigns, shareholders, directors, officers and agents, of and from any further obligation, liability, claim, demand and cause of action of every kind and nature, including but not limited to any claims arising out of Fenne's previous employment with or ownership interest in the Company, which he or it has, had or may have against the other, whether based on statute, common law, rule or regulation, whether in law or in equity, whether liquidated or unliquidated, whether known or unknown, for, upon, or by reason of, or in any manner causing or giving, whatsoever, on or at any time before the date of this Agreement. Notwithstanding the foregoing, the release granted by the Company in favor of Fenne pursuant to this Section 5.1 is expressly conditioned on Fenne's full compliance with the terms of this Agreement and shall be void ab initio if Fenne breaches this Agreement.

5.2 **Waiver of Code Provisions.** The Company and Fenne hereby acknowledge and agree that it is their intention that this Agreement shall be effective as a full and final accord and satisfaction and settlement of and as a bar to each and every claim, demand, debt, account, reckoning, liability, obligation, cost, expense, item, action and cause of action, heretofore referred to and released, which either party hereto has, or has had against the other party hereto. In connection with such waiver and relinquishment, the Company and Fenne hereby acknowledge that they are aware that they or their attorney may hereafter discover facts different from or in addition

to the facts which they or their attorney now know or believe to be true with respect to the subject matter of this Agreement, but that it is their intention to fully, finally, absolutely and forever settle any and all claims, disputes and differences which now exist or heretofore have existed between either party to this Agreement, and that in furtherance of such intention the mutual releases herein given shall be and remain in effect as full and complete general mutual releases notwithstanding the discovery of any such different or additional facts. Therefore, each of the parties hereto acknowledges that they have been informed by their respective attorneys and/or advisors of, and that they are familiar with, Section 1542 of the Civil Code of the State of California which provides as follows:

## ARTICLE VII MISCELLANEOUS

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

**The Company and Fenne do hereby abandon, release, waive and relinquish, all rights and benefits which they may acquire under Section 1542 of the Civil Code of the State of California pertaining to the subject matter of this Agreement.**

**5.3 Covenant not to Sue.** Each of the Company and Fenne hereby agrees not to file, institute or directly or indirectly cause to be filed or instituted any suit, action or proceeding of any kind against the other party or his or its personal or legal representatives, executors, successors and assigns, shareholders, directors, officers or agents based on any obligation, liability, claim, demand or cause of action of any kind or nature, including but not limited to any claims arising out of Fenne's previous employment with or ownership interest in the Company, which he or it has, had or may have against such persons, whether based on statute, common law, rule or regulation, whether in law or in equity, whether liquidated or unliquidated, whether known or unknown, for, upon, or by reason of any matter, cause or thing, whatsoever, on or at any time before the date of this Agreement.

## ARTICLE VI INDEMNIFICATION

**6.1 Mutual Indemnification.** The Company and Fenne do hereby agree to indemnify, defend and hold harmless the other party, its directors, officers, employees, agents and successors and assigns, from and of any and all actions, causes of action, suits, debts, covenants, controversies, agreements, promises, liabilities, torts, negligence, errors, obligations, fees, damages, judgments, claims, counterclaims, costs and expenses, including reasonable attorneys' fees, suffered or incurred by either party, its directors, officers, employees, agents, and successors and assigns, arising out of or in connection with the business of the Company prior to the date of this Agreement.

**7.1 Notice of Future Financings.** The Company shall provide notice to Fenne at least five (5) days before the closing of any future transaction, including a private placement of securities or an initial public offering of the Company's capital stock, in which the Company obtains financing.

**7.2 Notices.** All notices or other communications required or permitted hereunder shall be in writing and shall be deemed given, delivered and received (a) when delivered, if delivered personally, (b) four days after mailing, when sent by registered or certified mail, return receipt requested and postage prepaid, (c) one business day after delivery to a private courier service, when delivered to a private courier service providing documented overnight service, and (d) on the date of delivery if delivered by telex/copy, receipt confirmed, provided that a confirmation copy is sent on the next business day by first class mail, postage prepaid, in each case addressed as follows:

To Fenne at his home address.

With a copy to:

Steven Kuhn  
28202 Cabot Rd.  
Laguna Nigel, California 92677  
Ph.: (949) 664-0600  
Fax: (949) 664-0606

To Company at:

Pixelon, Inc.  
31732 Rancho Viejo Road, Suite D  
San Juan Capistrano, California 92675  
Attn: Stephanie Kitzes  
Ph: (951) 248-4655  
Fax: (951) 248-9930

With a copy to:

Shefsky & Froelich Ltd.  
444 North Michigan Avenue, Suite 2400  
Chicago, IL 60611  
Attention: Mark Borrelli  
Ph: (312) 836-4014

Any party may change its address for purposes of this paragraph by giving the other party written notice of the new address in the manner set forth above.

**7.3 Entire Agreement; Amendments, Etc.** This Agreement contains the entire agreement and understanding of the parties hereto, and supersedes all prior agreements and understandings relating to the subject matter thereof. Except as provided in Sections 7.3.2 and 7.6, no modification, amendment, waiver or alteration of this Agreement or any provision or term hereof shall in any event be effective unless the same shall be in writing, executed by both parties hereto, and any waiver so given shall be effective only in the specific instance and for the specific purpose for which given.

**7.4 Benefit.** This Agreement shall be binding upon, and inure to the benefit of, and shall be enforceable by, the heirs, successors, legal representatives and permitted assignees of Fenne and the successors, assignees and transferees of the Company. This Agreement or any right or interest hereunder may not be assigned by Fenne without the prior written consent of the Company. Fenne acknowledges that he has obtained independent counsel to represent him in connection with the subject matter of this Agreement, and has not been provided representation by counsel to the Company with respect to the subject matter of this Agreement.

**7.5 No Waivers.** No failure or delay on the part of any party hereto in exercising any right, power or remedy hereunder or pursuant thereto shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder or pursuant thereto.

**7.6 Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law but, if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. If any part of any covenant or other provision in this Agreement is determined by a court of law to be overly broad thereby making the covenant unenforceable, the parties hereto agree, and it is their desire, that the court shall substitute a judicially enforceable limitation in its place, and that as so modified the covenant shall be binding upon the parties as if originally set forth herein.

**7.7 Mutual Preparation.** The terms of this Agreement are contractual and are the result of negotiation between the parties. In construing this Agreement, or any of its terms, the same shall not be construed against any party because that party or that party's legal representative drafted such provision of the Agreement.

**7.8 Compliance and Headings.** Time is of the essence of this Agreement. The headings in this Agreement are intended to be for convenience and reference only, and shall not define or limit the scope, extent or intent or otherwise affect the meaning of any portion hereof.

**7.9 Governing Law.** Except where a provision of California law is specifically cited herein, the parties agree that this Agreement shall be governed by, interpreted and construed in accordance with the laws of the State of Delaware, and the parties agree that any suit, action or proceeding with respect to this Agreement shall be brought in the courts of Orange County in the State of California or in the U.S. District Court for the Central District of California. The parties hereto hereby accept the exclusive jurisdiction of those courts for the purpose of any such suit, action or proceeding. Venue for any such action, in addition to any other venue permitted by statute, will be Orange County, California.

**7.10 Arbitration.** Except as expressly contemplated by Article III, any dispute arising between the parties pursuant to this Agreement shall be submitted to binding arbitration. Any such arbitration proceeding will be conducted in Orange County, California and except as otherwise provided in this Agreement, will be conducted in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. One arbitrator shall conduct the proceedings. The arbitrator shall be selected in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The arbitrator shall allow such discovery as the arbitrator determines appropriate under the circumstances. The arbitrator shall determine which party, if either, prevailed and shall award the prevailing party its costs and reasonable attorneys fees. The award and decision of the arbitrator shall be conclusive and binding on all parties to this Agreement and judgment on the award may be entered in any court of competent jurisdiction. The parties acknowledge and agree that any arbitration award may be enforced against either or both of them in a court of competent jurisdiction and each waives any right to contest the validity or enforceability of such award. The parties further agree to be bound by the provisions of any statute or limitations which would be applicable in a court of law to the controversy or claim which is the subject of any arbitration proceeding initiated under this Agreement. The parties further agree that they are entitled in any arbitration proceeding to the entry of an order, by a court of competent jurisdiction pursuant to an opinion of the arbitrator, for specific performance of any of the requirements of this Agreement. The parties further agree that the arbitrator shall provide a statement of reasons explaining the basis of the decision rendered.

**7.11 Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.





PIXELON, INC.

**CONFIDENTIALITY AND TRADE SECRET AGREEMENT**

The parties to this Confidentiality and Trade Secret Agreement ("Agreement") are  
Pixelon, Inc. ("Pixelon") and Michael Fenne ("Employee").

Whereas, Employee is employed by Pixelon and Pixelon will be revealing  
Confidential Information and Trade Secrets to Employee; and

Trade Secrets and acknowledge that Pixelon would be substantially harmed by competitors  
knowing its Confidential Information and Trade Secrets;

Therefore, for good and valuable consideration, which the parties agree and warrant  
is sufficient to support enforcement of this Agreement, Pixelon and Employee hereby agree  
as follows:

1. In reliance upon this Agreement, Pixelon (acting as a "Disclosing Party") may disclose to Employee (acting as a "Receiving Party") Confidential Information of the Disclosing Party. Receiving Party hereby acknowledges and agrees that certain items of information currently in Receiving Party's possession, or later to come into Receiving Party's possession, presently constitute, or shall constitute in the future, valuable Trade Secrets or proprietary business information of Disclosing Party. Such items of information, which are herein collectively referred to as the "Confidential Information," shall include but are not limited to the following:
  - (i) Product formulae, customer requirements, and all other technical data used or useful in Disclosing Party's business or related to any research and development activities carried on by Disclosing Party.
  - (ii) All customer lists, accounting, costs, sales, and other information relating to Disclosing Party's business.
  - (iii) All other information of any type or description whatsoever which is protected by law as a Trade Secret or as proprietary information of Disclosing Party, or which has been designated to Receiving Party either orally or in writing as a Trade Secret or proprietary information of Disclosing Party. For purposes of the foregoing sentence, "Trade Secret" shall include, without limitation, any formula, device, or compilation of information not generally known in the industry which Disclosing Party uses in its business and which gives Disclosing Party an opportunity to obtain an advantage over competitors who do not know it.

(iv) All Confidential Information (as herein defined) of all customers, contractors, and others with whom Disclosing Party had, has or will have a business relationship learned or acquired by Receiving Party during the course of or as a result of Receiving Party's contractual relationship with Disclosing Party.

All of the foregoing information shall be deemed "Confidential Information" until such time as it becomes generally known in the industry by means other than improper disclosures or other improper action or inaction made by Receiving Party.

2. Receiving Party shall not, directly or indirectly, either during the term of its relationship with Disclosing Party or thereafter, disclose or use the Confidential Information other than in the business of or as directed by, Disclosing Party without the prior written consent of Disclosing Party.

3. Receiving Party shall not, directly or indirectly, either during the term of its relationship with Disclosing Party or thereafter, take, copy, or remove any of the Confidential Information from Disclosing Party's premises, whether in the form of manuals, printed sheets, reproductions, personal notes, or otherwise, without the prior written consent of Disclosing Party.

4. Receiving Party shall at all times and forever safeguard and protect all of the Confidential Information of Disclosing Party to prevent its being exposed to, or taken by, unauthorized persons, and when entrusted to Receiving Party will exercise its best efforts to assure its safekeeping.

5. Upon request of a Disclosing Party, Receiving Party will deliver to Disclosing Party, within three (3) days of receiving such request, all Confidential Information which is in the possession or control of the Receiving Party.

6. In any action at law or in equity to enforce or construe any of the provisions or rights under this Agreement, the unsuccessful party or parties to such litigation, as determined by the court in a final judgment or decree, shall pay the successful party or parties all costs, expenses, and attorneys' fees incurred therein by such successful party or parties (including without limitation such costs, expenses, and fees on any appeal(s)), and if such, successful party or parties shall recover judgment in any such action or proceeding, such costs, expenses, and attorneys' fees shall be included in as part of such judgment. Any litigation concerning this Agreement shall be venued in Orange County, California.

7. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

